

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

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JULY 17 2009
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

WANDA R.,)	
)	
Appellant,)	2 CA-JV 2009-0024
)	DEPARTMENT A
)	
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
ARIZONA DEPARTMENT OF)	Rule 28, Rules of Civil
ECONOMIC SECURITY and)	Appellate Procedure
JAZMIN C.,)	
)	
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. JD200600014

Honorable Stephen M. Desens, Judge

AFFIRMED

Patricia O'Connor

Chandler
Attorney for Appellant

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Tucson
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Department of Economic Security

PELANDER, Judge.

¶1 Wanda R. appeals from the juvenile court’s order terminating her parental rights to her four-year-old daughter, Jazmin C., on the grounds of mental illness, pursuant to A.R.S. § 8-533(B)(3), and court-ordered, out-of-home placement for a cumulative period of fifteen months or longer, pursuant to § 8-533(B)(8)(c). Wanda challenges the sufficiency of the evidence to support the termination order. We affirm for the reasons stated below.

¶2 The juvenile court may not terminate a parent’s rights to a child unless the court finds, based on clear and convincing evidence, that at least one statutory ground for severance exists and that a preponderance of the evidence shows termination of the parent’s rights is in the child’s best interests. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). In reviewing a severance order, we “accept the juvenile court’s findings of fact unless no reasonable evidence supports those findings, and we will affirm . . . [the] order unless it is clearly erroneous.” *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002). And, we view the evidence and all inferences therefrom in the light most favorable to sustaining the juvenile court’s order. *See id.* ¶ 13.

¶3 Jazmin was removed from Wanda’s home in February 2006 after Child Protective Services (CPS) received reports that the child was being neglected and possibly abused as a result of Wanda’s mental health issues, which included a diagnosis of bipolar disorder; substance abuse; criminal conduct; and domestic violence involving Jazmin’s father, Merardo C. Jazmin was briefly placed with her grandparents, but because they allowed Wanda to have contact with her, Jazmin was removed and placed with her maternal

great-aunt and -uncle. She has remained with them except for a five-month period during which she was returned to her parents.

¶4 In February 2006, the Arizona Department Economic Security (ADES) filed a petition alleging the child was dependent. After both parents subsequently pled no contest to an amended petition in October 2006, the juvenile court adjudicated Jazmin dependent. ADES had previously filed a dependency petition as to Jazmin's older sister Jennifer in May, and she, too, was adjudicated dependent. The court approved an initial case plan goal of reunification. The family was provided a panoply of services and appeared to benefit from those services. Consequently, Jazmin was returned to the home in January 2008. But the parents again began to use methamphetamine, and in May Jazmin was again removed from the home.

¶5 In October 2008, ADES filed a motion for termination of both parents' rights to Jazmin. After a two-day severance hearing, the juvenile court granted the motion in a thorough minute entry, subsequently executing the formal findings of fact, conclusions of law, and order ADES had submitted to it as directed. This appeal followed.

¶6 Section 8-533(B)(8)(c) provides that the juvenile court may terminate a parent's rights if

[t]he child has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order . . . , the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future.

The court concluded termination was warranted on this ground after it made various factual findings. It found, for example, that ADES had made diligent efforts to provide Wanda with appropriate reunification services, including treatment for her long-term substance abuse, psychological and psychiatric evaluations, drug testing, supervised visitation, parenting classes, in-home parenting assistance, and various forms of therapy. The court characterized Wanda's cooperation with those services as "sporadic" but found she had been making progress when Jazmin was returned to her and Merardo in early January 2008. But, the court found, "On January 14, 2008, hair strand analysis proved that both parents had used methamphetamines in the three . . . month[s] . . . prior to the return of the minor child." The court added that, despite having provided services designed to "preserve the placement," ADES had had to remove Jazmin from the home once again in May because of Wanda's "continued drug use, failure to comply with drug testing orders, and an unstable domestic relationship between the parents."

¶7 The juvenile court also found that Wanda had tested positive in June 2008 for opiates, morphine, and marijuana and, in October 2008, for methamphetamine. Further, the court found: "Stability, consistency, and permanency for the minor child are still material issues [that] have not been achieved by the parents. Neither parent has established a consisten[t] pattern of sobriety." Following the language of the statute, the court thus concluded the parents had "been unable to remedy the circumstances that cause the child to be in an out-of-home placement. There is a substantial likelihood that the parents will not be capable of exercising proper and effective parental care and control in the near future."

¶8 There is reasonable evidence in the record to support the findings of fact summarized above. And those findings, as well as others we can infer the juvenile court made, sufficiently support the court’s conclusion that ADES proved the elements of § 8-533(B)(8)(c). *See Marco C. v. Sean C.*, 218 Ariz. 216, n.3, 181 P.3d 1137, 1141 n.3 (App. 2008) (“We may generally infer findings of fact necessary to sustain a court’s order.”). It was for that court, not this court, to resolve any conflicts in the evidence. *See Lashonda M. v. Ariz. Dep’t of Econ. Sec.*, 210 Ariz. 77, 82, ¶ 16, 107 P.3d 923, 928 (App. 2005). Similarly, it was for that court as the trier of fact to weigh the evidence, *Jesus M.*, 203 Ariz. 278, ¶ 12, 53 P.3d at 207; we do not reweigh evidence on appeal.

¶9 In challenging this ground for the juvenile court’s termination of her parental rights, Wanda relies on her arguments pertaining to the mental-illness ground for termination pursuant to § 8-533(B)(3), insisting the evidence did not establish she had failed to remedy “her mental health situation or that she cannot do so in the near future.” She emphasizes the evidence that was favorable to her, including evidence she had benefitted from services provided. She notes in particular evidence that she “was taking her medication consistently since May of 2008,” that she has “a good relationship with Jazmin,” and that the case manager from Catholic Social Services believes she has the ability to parent. Wanda contends the evidence that she will be unable to parent in the near future “was speculative at best.”

¶10 The juvenile court, however, was well aware of the evidence that Wanda had benefitted from services provided and clearly took this into consideration when it ruled on

ADES's motion. Additionally, we reject Wanda's contention that we must reverse the court's order because the evidence that she would be unable to parent effectively in the future was "speculative at best." She fails to recognize that the statute itself calls for a certain degree of forecasting, permitting termination of a parent's rights if "there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future." § 8-533(B)(8)(c). Based on a parent's past conduct and the testimony of counselors, psychologists, and other experts, the court must assess the likelihood that the parent will be able to parent adequately in the near future. The court engaged in precisely that kind of assessment here based on evidence of Wanda's lengthy history of substance abuse; her serious mental health issues, which include bipolar affective disorder, a mood disorder, and post-traumatic stress disorder resulting from sexual abuse by her father and abuse by her mother; and her poor prognosis for overcoming these challenges in order to provide a stable, functional home and parent Jazmin appropriately for a sustained period of time.

¶11 Because the juvenile court's termination of Wanda's parental rights is sustainable under § 8-533(B)(8)(c), we need not address her argument that there was insufficient evidence to justify termination on the ground of mental illness pursuant to § 8-533(B)(3). *See Jesus M.*, 203 Ariz. 278, ¶ 3, 53 P.3d at 205 ("If clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered severance, we need not address claims pertaining to other grounds."). We therefore turn to

the last issue she raises, which appears to be a challenge to the court's finding that terminating her parental rights was in Jazmin's best interests.

¶12 Wanda's argument is not clear. She contends that, because there was insufficient evidence of either statutory ground, "the issue of best interest cannot be considered." She then appears to challenge the sufficiency of the evidence to support the best-interests finding, pointing to the testimony of the Catholic Social Services caseworker about her ability to "provide a safe and nurturing home environment for Jazmin."

¶13 Having found sufficient evidence to sustain the juvenile court's termination order pursuant to § 8-533(B)(8)(c), we necessarily reject Wanda's apparent suggestion that Jazmin's best interest was essentially irrelevant and that the court should not have considered it. To the extent Wanda is challenging the sufficiency of the evidence to support the court's best-interests finding, we disagree.

¶14 To establish that termination of Wanda's parental rights was in Jazmin's best interests, ADES was required to establish by a preponderance of the evidence that Jazmin "would derive an affirmative benefit from termination or incur a detriment by continuing in the relationship." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 6, 100 P.3d 943, 945 (App. 2004). "The existence of a current adoptive plan is one well-recognized example of such a benefit." *Id.*

¶15 The evidence established, and the juvenile court found, that Wanda was unable to parent Jazmin effectively for a sustained period of time and is unlikely to be able to do so in the near future. When asked whether she believed termination of both parents' rights

would benefit Jazmin, the CPS case manager responded, “Jazmin deserves a home that is stable, that is drug free, that has no domestic violence, where she can witness a good relationship between husband and wife,” which she was getting in the home of her great-aunt and -uncle. As the court correctly found, except for the brief period between January and May 2008 when Jazmin was returned to her parents, she has been with those relatives since she was removed from her parents’ home in February 2006. The court found that Jazmin is adoptable and that the relatives with whom she is placed are “willing and able to adopt [her] and . . . can provide the permanency, stability and safety in a nurturing home environment, which is the least restrictive placement, consistent with the needs of the child.” The court added, “A termination of these parental rights would further the plan of adoption.” These findings are amply supported by the record and support the court’s conclusion that termination of Wanda’s rights to Jazmin was in the child’s best interests.

¶16 For the foregoing reasons, we affirm the juvenile court’s order terminating Wanda’s parental rights to her daughter Jazmin.

JOHN PELANDER, Judge

CONCURRING:

JOSEPH W. HOWARD, Chief Judge

PHILIP G. ESPINOSA, Presiding Judge